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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO.2619/1996

New Delhi this the 2nd day of May, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

Ex. SI Girwar Singh S/O Jai Singh,
R/O A-1/4, Bhajanpura, Shahdara,
Delhi.

... Applicant

(By Shri Shankar Raju, Advocate)

-Versus-

1. Union of India through
Secretary, Ministry of
Home Affairs,
North Block, New Delhi.
2. Commissioner of Police,
PHQ, MSO Building,
I.P.Estate, New Delhi.
3. Addl. Commissioner of Police
(Ops.), PHQ, MSO Building,
I.P.Estate, New Delhi.
4. F.F.R.O. (D.C.P.),
Hans Bhawan, I.T.O.,
New Delhi.

... Respondent

(By Ms. Neelam singh, Advocate)

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

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The case of the applicant is identical to the case of Constable Sudhir Kumar who had filed O.A. No.1654/96. Both the applicant herein who at the material time was a Sub Inspector, and the aforesaid applicant in O.A. No.1654/96 who was a Constable, were posted with F.R.R.O. at the Indira Gandhi International Airport, Delhi. Against both of them disciplinary proceedings were initiated vide order passed on 28.3.1994. By a further order passed on

7.4.1994 one Shri S.K.Indora, ACP D.E. Cell was appointed enquiry officer who in turn after examining prosecution witnesses framed a charge against them. Since each of the delinquents pleaded not guilty, a charge was framed against them on 29.11.1994. They examined four defence witnesses. The enquiry officer submitted his report dated 30.12.1994 holding both the delinquents guilty of the charge framed against them. The disciplinary authority considered the representation of the delinquents against the findings of the enquiry officer. The delinquents were given a personal hearing on 22.2.1995 by the disciplinary authority. By an order passed on 10.3.1995 the disciplinary authority accepted the findings of guilt against the delinquents and imposed different penalties upon them. As far as Const. Sudhir Kumar is concerned, his pay was reduced by five stages permanently from Rs.1090 to Rs.990 per month in the time scale of pay for a period of five years, ~~and~~ As far as the applicant herein, SI Girwar Singh, is concerned, a penalty of reduction in rank from Sub Inspector to Assistant Sub Inspector for a period of five years was imposed upon him. Aforesaid orders were carried in appeal separately by both the delinquents before the appellate authority. The appellate authority vide its order passed on 21.8.1995 in the appeal filed in the instant case enhanced the penalty to dismissal from service. As far as the delinquent Const. Sudhir Kumar is concerned, the penalty imposed by the disciplinary authority was maintained and his appeal was dismissed.

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The applicant herein preferred a revision application and the revisional authority by its order dated 10.6.1996 has dismissed the same. As far as the delinquent Sudhir Kumar is concerned, he did not preferred a revision application but instituted in this Tribunal O.A. No.1654/96 wherein by a judgment and order passed on 25.2.2000 to which one of us (Ashok Agarwal, J.) was a party. The O.A. was allowed and the impugned order imposing penalty on him was set aside and a direction was issued for restoration of his ^{period} reduced pay and withheld increments and to treat his ^{period of} suspension as spent on duty with pay and allowances. As far as the order in the aforesaid O.A. No.1654/96 is concerned, the same has not been impugned by and on behalf of the respondents. On the contrary, by an order passed on 10.4.2000, aforesaid order has been complied with by the respondents.

2. The case of the applicant in the instant case, we find, is identical to that of the applicant in the aforesaid O.A. No.1654/96. A joint disciplinary proceeding containing identical allegations of charge was held against them. They were charged with the following allegations :

"The allegations against both the delinquents i.e. SI Girwar Singh, No.768/D and Ct. Sudhir Kumar, No.260/F are that on 14.10.93, at about 8.30 PM SI Girwar Singh No.768/D (in uniform) and Ct. Sudhir Kumar No.260/F (in plain clothes) came at Old Delhi Main Railway Station and asked Mr. Abdul Rehman S/O Shri Ramzan Ali R/O 452, Zakir Nagar, Jamia Nagar, New Delhi while he was boarding the train 'Shaheed Express' to search his suitcase, which contained Rs.10,89,000/-. They questioned about the amount carried by him and later on demanded

to part the money if he wanted to go. When Mr. Abdul Rehman refused to budge and turned down their request, they handed him over to the local police of Police Station Delhi Main in order to establish their (SI Girwar Singh No.768/D and Ct. Sudhir Kumar No.260/F) honesty and devotion to duty after making a concocted version. The local police of PS Delhi Main after joint and sustained interrogation of Abdul Rehman realized that there was some foul play in the version narrated by the SI and Ct. They found that both SI Girwar Singh No.768/D and Ct. Sudhir Kumar No.260/F intended to extort money from Abdul Rehman and with this malintention they had followed the complainant. Accordingly, SI Girwar Singh No.768/D and Ct. Sudhir Kumar No.260/F were placed under suspension vide this office order Nos.7558-82/For.(HAP) dated 4.11.93 and 7538-7608/For.(HAP) dated 4.11.93 respectively."

3. In support of the aforesaid charge levelled against each of them, common evidence was led on behalf of the prosecution. Both the delinquents have led common defence witnesses and a common order has been passed by both the enquiry officer as also the disciplinary authority. Points which have been found in favour of the applicant's co-delinquent in the aforesaid O.A. No.1654/96 will apply on all fours in favour of the present applicant in the present O.A. It has been found in the aforesaid O.A. No.1654/96 that the delinquents had applied to the enquiry officer for summoning defence witnesses. The application was rejected by granting time to the delinquents to produce the same in their defence. It has inter alia been observed in the judgment passed in the aforesaid O.A. No.1654/96 that since the defence witnesses were serving police officers they could be relieved for giving evidence only by the respondents. The delinquents could not have availed of their

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services ~~not~~ by merely summoning them. Enquiry officer in the circumstances should have summoned the defence witnesses. It has further been found in the aforesaid judgment that the enquiry officer had proceeded to cross examine two prosecution witnesses, namely, PW2 SI Narender Singh and PW10 Abdul Rehman. It was found that according to Delhi Police (Punishment and Appeal) Rules the enquiry officer could not have cross examined the PWs as well as the DWs. He could only seek some clarification but could not cross examine them with a view to fill in the gaps. Placing reliance on certain judgments earlier rendered, it was found that the enquiry officer cannot assume the role of a judge and a prosecutor and that it would vitiate the entire proceedings being violative of principles of natural justice. It was further found in the aforesaid judgment that the complainant Abdul Rehman had not made allegations against the delinquents at the initial stage when he was handed over to SI Narender Singh who was on patrol duty at that time at the railway platform. The complainant had made allegations in his statement later recorded during his interrogation and not immediately after his arrest. The allegations were thus made against the delinquents behind their back. It was further found that had the delinquents really intended to get the money from the complainant they would not have handed over the complainant to the police authorities. They could have availed of the reward of 20% of the amount being given to the

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informers. It was accordingly found that there was not enough evidence to establish the allegations against the delinquents.

3. On the aforestated facts, the said O.A. No.1654/96 was allowed and the penalty imposed upon the applicant therein was quashed and set aside. Reasons which have appealed to this Tribunal for passing the aforesaid order would apply on all fours to the applicant herein.

4. For the aforesaid reasons contained in the aforesaid judgment in O.A. No.1654/96, the present O.A. is accordingly allowed in terms of prayer contained in paras 8(A) to 8(D) which are as under :

"(A) To quash the impugned order of punishment of reduction in rank inflicted by Ann. A-1.

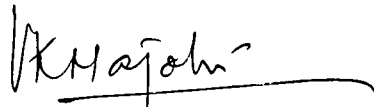
(B) To quash the impugned order of dismissal dated 21-8-95 at Ann. A-2 and to direct the respondents to reinstate the applicant in service w.e.f. 21-8-1995 alongwith all the consequential benefits including Pay & Allowances, continuity of service, seniority and promotion.

(C) To direct the respondents to treat the applicant as Sub-Inspector w.e.f. 10-3-1995 to 21-8-95 and he may be granted difference of salary as well as seniority in the rank of Sub-Inspector.

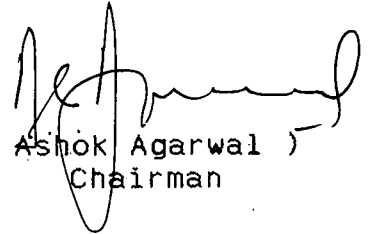
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(D) To set-aside the revision order at Ann. A-3,
Show Cause Notice at Ann. A-4, finding at Ann.
A-5."

There shall be no order as to costs.



(V. K. Majotra)
Member (A)



(Ashok Agarwal)
Chairman

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